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Will Democrats Use Welfare Reauthorization to Reverse Responsible Policy?

Immigrants Welcome to Pursue Opportunity, Not Dependence

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Executive Summary

- The 1996 Welfare Reform Act restricted legal immigrants' eligibility for cash welfare benefits in order to reduce the welfare-dependent population and ensure such benefits are not an incentive to immigrate to the United States.
- In 1996, prior to enactment of the Welfare Reform Act, the number of non-U.S. citizens made up 12 percent of adult welfare cash recipients – up from 7 percent just six years before.
- The current federal welfare law confirms long-standing U.S. immigration policy, holds in check the number of welfare-dependent immigrants, and encourages legal immigrants to become true stakeholders in their resident country by becoming citizens.
- The law already provides significant exemptions for immigrants with special needs and circumstances (such as for refugees, asylees, active-duty military immigrants, and veterans), yet Democrats suggest they will continue their attempts to roll back this responsible policy when the Senate turns to welfare reauthorization.
- Instead of rolling back reforms, Congress should do more to ensure that immigrants do not need to rely on federal cash benefits. One way to do so would be tightening the compliance and enforcement provisions on immigrants' legal sponsors to assure that sponsors live up to their pledge to support their charges.

Introduction

One of the seminal achievements of the Republican-driven 1996 Welfare Reform Act was to make welfare policy more consistent with long-standing U.S. immigration policy: no one should come to America to be a ward of the state. The 1996 law attempted to ensure that immigrants would depend for assistance on the citizens who sponsored their immigration, not on the federal government, and that immigrants should strive to become U.S. citizens.[1] This was a significant step in ending the trend of escalating percentages of welfare benefits being paid to immigrants.

Several factors have served to mitigate the impact of the immigrant-welfare policy reforms contained in the 1996 Welfare Reform Act, including: the numerous exemptions adopted by Congress (in 1996, and in subsequent years); the wide availability of many other government benefits available to immigrants; and the willingness of states to use state funds to pay benefits to immigrants who are ineligible for federal benefits.

Even with these methods to address special needs and circumstances, Democrats have advocated rolling back the reforms embodied in the 1996 Act. Amendments they advocate will expand federal welfare and unjustifiably release immigrant sponsors from their legally binding obligations.[2] The Senate should defeat such efforts and, instead, work to assure that the federal welfare law upholds the policy that legal immigrants themselves and their sponsors are the primary parties responsible for their welfare.

Self-Sufficiency is Long-Standing Immigration Policy

In passing the 1996 Welfare Reform Act, Congress attempted to bring the welfare program into alignment with long-standing immigration policy – that those who immigrate to the United States should not depend on government benefits but be prepared to work for a living. From colonial times, it was believed that immigrants likely to become "public charges" – unable to provide for themselves – should be denied entry or deported. The earliest immigration laws passed by the U.S. Congress echoed this sentiment.[3] Despite this history, the policy of self-sufficiency began to see some erosion during the 20th century with passage of liberal social welfare programs that made legal immigrants eligible for government-sponsored welfare benefits.

As the number of immigrants drawing government benefits increased, individual state efforts to require self-sufficiency were frustrated by U.S. Supreme Court decisions holding that only the federal government may draw distinctions between legal immigrants and U.S. citizens. In two decisions from the 1970s, the Court held that immigration policy lies solely within the authority of the federal government and that states violate the Fourteenth Amendment's Equal

[1] This paper deals with legal immigrants' eligibility for government programs. It does not address illegal immigration. Within this paper, the term "immigrants" refers to legal immigrants.
[2] Amendments are further discussed on page 6 of this paper.
[3] James R. Edwards, "Public Charge Doctrine: A Fundamental Principle of American Immigration Policy," Center for Immigration Studies, May 2001.

Protection clause if they draw distinctions between citizens and legally permanent residents (absent compelling circumstances) unless authorized to do so by federal law.[4]

The 1996 Welfare Reform Act provided the needed federal distinction: it declared national policy to be that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather on their own capabilities and the resources of their families, their sponsors and private organizations, and [that] the availability of public benefits not constitute an incentive for immigration to the United States."[5] Under the Act, immigrants who entered the United States after the law's enactment on August 22, 1996, were to be ineligible for benefits through the welfare program, the Food Stamp program, Medicaid, or Social Security until they either became citizens or resided in the United States for five years. However, the Welfare Reform Act provided numerous exemptions, and those exemptions have been broadened in recent years.

Sponsors' Legally Binding Obligations

In addition to providing the five-year waiting period for government benefits to immigrants, the Welfare Reform Act also requires those who sponsor new immigrants to be able to support them if necessary, and it provides a mechanism to ensure that sponsors honor their obligation. Most immigrants are sponsored by a current citizen. That sponsor makes a legally binding affidavit of support agreeing to fulfill the public welfare needs of the immigrant. In addition to provisions included in the Welfare Reform Act, Congress also passed immigration-reform legislation to strengthen the standards and enforcement of the commitment made by sponsors.[6]

According to the 1996 immigration reforms, when a citizen petitions for admission of an immigrant, he or she must sign an affidavit of support committing to provide for the welfare of his charge for 10 years or until the immigrant is naturalized. All of a sponsor's income is deemed to be available to the immigrant for the purposes of means-testing for eligibility for government programs; and the sponsor's annual income must exceed 125 percent of the federal poverty level. Sponsors who fail to support the immigrant they sponsor can be held legally liable to both the immigrant and any government agency that provides resources to the sponsored immigrant.

There are three prongs to enforcement of the public-charge doctrine: a potential immigrant may be denied entry through the U.S. Immigration and Customs Enforcement (ICE, formerly the Immigration and Naturalization Service) on grounds that he or she will become a public charge; an immigrant may be deported if he becomes a public charge; and an immigrant's sponsor may be held legally liable for failure to provide for the sponsored immigrant. In recent years, these provisions rarely have been enforced. Available data indicate that use of these mechanisms is declining. On public-charge grounds, the State Department denied visas to 46,450 immigrants in 2000, to 27,580 immigrants in 2001, and to 17,511 in 2003, the last year published data is

[4] Graham v Richardson, 403 U.S. 365 (1971); Mathews v. Diaz, 426 U.S. 67 (1976); see also Congressional Research Service, "Noncitizen Eligibility for Major Federal Public Assistance Programs: Legal Concepts," March 25, 2003, (RS21470).
[5] 8 U.S.C. 1601.
[6] P. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

available.[7] The INS deported only 31 individuals from 1971 to 1980 for becoming public charges. Since 1980, the agency has not published the number of deportations based on public-charge grounds; however, agency officials estimate public-charge deportations have declined to one or less a year, with none occurring in 2001 or 2002 and one occurring in 2003.[8]

The Department of Homeland Security (DHS) is required to keep records on the use of the third mechanism of enforcement – holding sponsors liable. Any federal, state, or local agency may seek reimbursement from the sponsor and, if the sponsor fails to respond within 45 days, may sue for the reimbursement.[9] Agencies that successfully obtain final judgments against sponsors are required to submit reports to DHS, but a DHS spokesperson stated that no such judgments have been obtained.[10] In past years, some observers have called for enhanced enforcement of the sponsor's affidavit of support.[11] The welfare reform bill (S. 667, the Personal Responsibility and Individual Development for Everyone (PRIDE) Act) reported on March 17, 2005 by the Senate Finance Committee, however, contains no provisions that would require enforcement of a sponsor's liability; nor has any such legislation been introduced in recent years.[12]

The affidavit of support exists to ensure the wellbeing of recent immigrants; it is a legally binding obligation, and should be enforced as such. Because the authority for a government agency to obtain reimbursement from an immigrant's sponsor has not proven effective, Congress should consider strengthening it. The law could be amended to provide that, upon notification that a sponsored alien who is ineligible for benefits has received them, the government agency that provided the benefits is *required* (rather than merely authorized) to actively pursue reimbursement from the alien's sponsor.

Large Social Safety Net in Place for Immigrants

The Welfare Reform Act exempted several groups within the immigrant population from its immigrant-welfare policy reform: aliens who have worked in the United States for 40 quarters (usually 10 years); immigrants (and their spouses and dependents) serving or who have served in the military; immigrants who are admitted as refugees; and asylees.[13] Refugees and asylees alone made up 6 percent of incoming immigrants in 2003,[14] and 45,000 immigrants (or 3.2 percent of the

[7] Department of State Bureau of Consular Affairs data.
[8] BCIS, Yearbook of Immigration Statistics, 2003; additional information obtained from Immigration and Customs Enforcement officials.
[9] 8 U.S.C. 1183a.
[10] Information obtained from Department of Homeland Security officials, April 12, 2005.
[11] See, for example, James R. Edwards, Jr., "Wards of the State," National Review Online, July 6, 2001: "Welfare-state politicians have weakened the public-charge doctrine. This important immigration policy no longer adequately protects the nation against the importation of immigrants who directly drain—rather than contribute to – society. We must strengthen the doctrine in welfare-reform reauthorization in order to promote the deep-seated American value of self-sufficiency."
[12] A review of past legislation was conducted by the Congressional Research Service, April 20, 2005.
[13] Refugees, asylees, and victims of trafficking in persons are eligible for Temporary Assistance for Needy Families (TANF) for their first five years in the U.S. and are eligible for food stamps, Medicaid, and Social Security for their first seven years in the U.S. Additional exempted classes include Cuban/Haitian entrants, Vietnam-born Amerasians fathered by U.S. citizens, and aliens whose deportation is being withheld for humanitarian reasons.
[14] BCIS, Yearbook of Immigration Statistics, 2003.

U.S. Armed Forces) are currently serving in the U.S. Armed Forces.[15] Additional exceptions have been enacted since the law took effect. Today, food stamps are available to all immigrants who are over 65, under 18, or disabled, and Supplemental Security Income benefits are available to immigrants who lived in the United States by the date of the law's 1996 passage.[16]

In addition to these exemptions, the impact of the Welfare Reform Act's immigrant-reform provisions has been limited by the access that *all* immigrants have to a wide array of federal and state government-funded services. Immigrants are still eligible for all noncash benefits available to U.S. citizens that are not offered on a means-tested basis. These include: school lunch and breakfast programs; immunizations and treatment of communicable diseases; emergency medical services; child protection and other services for victims of domestic violence; foster care and adoption payments; elementary and secondary education; disaster relief; soup kitchens; and other programs that protect life and safety.

As discussed earlier, every state has the option of offering immigrants access to more benefits than the federal government requires, but not less. Many states have exercised this option, creating state-funded programs that provide some or all of the benefits that were available prior to the Welfare Reform Act's passage.[17] Ironically, states have the resources for a more generous program for immigrants due in large part to federal welfare reform and its overwhelming success.

States are able to count any funds they spend on state welfare programs that may cover immigrants toward meeting their annually required "maintenance of effort" sum, which is the amount each state must spend in order to be eligible for the federal block grant.[18] The block grant has remained at the same level as it was in 1996 – $16.5 billion – even while state caseloads today are down to half of their 1996 level. With surplus federal dollars available to provide for citizens, states have used their own resources to provide more generous benefits to immigrants.[19] To illustrate how this has worked, note that from 1996 to 2003, the amount of their block grant that states were spending on cash benefits shrank from two-thirds to 24 percent with the departure of 7.3 million individuals from the welfare rolls. And so, states began to use surplus block grant funds to cover other needs of welfare recipients, such as childcare, family formation, and pregnancy prevention.

Since then, many of the states began to face budget crises, and so today, some are looking to the federal government to help pick up the extra costs they imposed on themselves.

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[15] American Forces Information Services News Release, "Servicemembers Become U.S. Citizens During Ceremony at Bush Library," U.S. Department of Defense, March 11, 2005.

[16] Benefits restored by: the Balanced Budget Act of 1997; the 1998 Agricultural Research, Extension, and Education Act; and the 2002 Farm Bill.

[17] GAO, "Welfare Reform: Many States Continue Some Federal or State Benefits for Immigrants," July 1998; Wendy Zimmermann and Karen C. Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform," The Urban Institute, 1998.

[18] In fact, a state is penalized by partial loss of funding if it fails to expend "maintenance of effort" (MOE) funds. MOE funds are equivalent to 75 percent of a state's "historic state expenditure" on welfare programs, as measured from 1994 state spending.

[19] HHS, FY03 TANF Financial Data, http://www.acf.hhs.gov/programs/ofs/data/tanf_2003.html.

Efforts to Liberalize Immigrant Welfare Policy Expected

The Senate may take up reauthorization of the welfare program later this year and, when it does, Democrats likely will attempt to increase benefits for immigrants. During the Finance Committee markup of the welfare reauthorization bill (S. 667), two amendments were filed, but not offered, by Democrat Senators. The first, filed by Senator Baucus, would give states the option to use federal funds to offer health benefits under the Medicaid and State Children's Health Insurance Program (SCHIP) programs to immigrants upon arrival in the United States. The second, offered by Senator Bingaman, goes even further in that it would extend benefits to legal and illegal immigrants. Specifically, it would make it easier for state and local governments to provide health services "to undocumented and otherwise unqualified immigrants."[20]

With respect to legal immigrants, these amendments represent a particular danger to long-standing immigration policy as they seek to release immigrant sponsors from their obligation of support. Providing public benefits to immigrants immediately upon arrival in the United States must be recognized for what it is – an effort to return to the harmful policy of greater dependency on the government, rather than self-sufficiency, and a rejection of long-standing immigration policy promoting self-dependence.

States' Attempt to Shift Costs to Federal Government is Unfair to Taxpayers

In 2003, during the House consideration of welfare reauthorization, it was falsely stated that the Welfare Reform Act prohibited states from providing welfare benefits to immigrants.[21] In fact, the opposite is true. Because Congress passed the Welfare Reform Act, states have the option to cover or not cover immigrants; if they do cover immigrants, they must use state resources to do so.

Recent research indicates that states choosing to offer generous benefits to immigrants generally have higher participation rates than states that offer less generous benefits.[22] Therefore, if a state makes itself a magnet for needy immigrants, it may bear a heavy burden to support them. Whatever the state's decision, it is not appropriate to shift the cost of that state's individual policy choice to the federal taxpayer. The welfare expansion advocated by Finance Committee Democrats, specifically by the Baucus amendment, would merely shift to the federal taxpayer the costs now borne by those states that have made the policy decision to provide more generous benefits to immigrants.

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[20] Quoted description from the amendment summary filed with the Finance Committee. This paper focuses on legal immigration, and does not discuss the ramifications of extending benefits to illegal immigrants.

[21] *Congressional Record*, February 13, 2003, H542, (Congressman Benjamin Cardin, "If a state chooses to cover legal immigrants, the state should have that option. There should be State flexibility. The underlying bill does not permit it; the substitute permits it.").

[22] George Borjas, "The Impact of Welfare Reform on Immigrant Welfare Use," Center for Immigration Studies, March 2002.

Retain Traditional Stand: Immigrants Must Not Be "Public Charges"

There is no question that the Welfare Reform Act ended the escalation in the percentage of federal cash welfare benefits that go to immigrants. The percentage of adult welfare cash recipients who were not citizens increased from 7 percent in 1989 to over 12 percent in 1996, when the Welfare Reform Act was enacted. In 2002, 9 percent of welfare cash payment beneficiaries were immigrants.[23] Using a broader measure that includes other types of government assistance in addition to welfare cash payments, the Center for Immigration Studies found that the number of immigrants drawing government benefits grew rapidly in the years leading up to enactment of the Welfare Reform Act, and has since declined.[24]

Rolling back the Welfare Reform Act's immigrant policy now could result in a return to the troublesome trend of immigrants coming to the United States to take advantage of a generous welfare system. Even with the current five-year prohibition on eligibility for federal benefits, the welfare program is still a factor in immigrants' decision-making. For example, a poll conducted in late 2002 of 1,000 immigrants found that nearly half indicated that qualifying for Medicaid or food stamps was a reason to become a citizen (22 percent believed it was a major reason, and 20 percent believed it was a minor reason).[25] Furthermore, the number of legal immigrants who naturalized after enactment of the 1996 Welfare Reform Act nearly doubled from the six-year period before the Act.[26] Recall that as a naturalized citizen, an individual may qualify for full federal welfare benefits.

Clearly, the emphasis must return to assuming that the burden of assisting new immigrants should fall to their sponsors, who have petitioned for their admittance and pledged to support them. Congress should explore ways to more vigorously enforce each sponsor's promise. Earlier in this paper, it was suggested that one means of doing this would be for Congress to mandate that agencies seek reimbursement for any benefits they inadvertently provided.

Enforcement of a sponsor's pledge could also be enhanced by making a change to the program called the Systematic Alien Verification for Entitlement (SAVE) Program. The SAVE Program enables federal, state, and local agencies to obtain immigration status information to ensure that only entitled applicants receive welfare and other public benefits. This automated verification system, administered by the Department of Homeland Security, includes the welfare program as a mandatory participant.[27] According to the DHS, the response time for the automated SAVE system to verify a welfare applicant's immigration status is three to five seconds for the initial query. However, information identifying an immigrant's sponsor is not currently automated. To obtain this information, an agency must file a written request to the SAVE system, with the response returned in the mail. This process could be made simpler and faster if information identifying an immigrant's sponsor were part of the SAVE automated system. Making this change could help federal, state, and local agencies enforce the affidavit of support.

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[23] U.S. Department of Health and Human Services, "Temporary Assistance for Needy Families Program: Sixth Annual Report to Congress," November 2004.
[24] Borjas.
[25] Carnegie Corporation of New York, 2002, National Journal online.
[26] BCIS.
[27] Department of Homeland Security, SAVE Program website, http://uscis.gov/graphics/services/SAVE.htm.

Conclusion

Congress should not further undo the work accomplished in the Welfare Reform Act. This law sent the message that the United States is a land of opportunity, not of dependence. Immigration for those who seek a life of independence is a positive factor in our nation's character; in fact, it is our nation's very foundation. Encouraging immigrants who, instead, seek dependence places an undue burden on taxpayers. The Welfare Reform Act struck the right balance: immigrants facing danger at home, such as asylees and refugees, may come to the United States and benefit from up to seven years of taxpayer-funded support; and those who step up to protect our nation by serving in the military can count on support, if necessary, for themselves and their families. Those who claim they will support themselves, however, must do so, or must depend on their sponsors for at least five years. Congress should defeat any amendments that weaken this policy. If any legislative remedy is called for, it should be in the form of developing the means to enforce the sponsors' obligation.